

# CHAPTER 26 - Disposal of Rights of Way

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## CHAPTER 26 - Disposal of Rights of Way

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### ARTICLE 1 - Disposal of Rights of Way on Operating Facilities

#### **Design Request to Decertify and Dispose of R/W**

The responsible District Design unit prepares the request for District Director approval to decertify and dispose of portions of rights of way on operating facilities. This may include land, access rights, or both. Since right of way information is required, the Project Engineer (PE) must coordinate the preparation of the request with the Right of Way Branch. See Article 3 for information needed for the request for approval that is sent to the District Director.

Following the District Director's approval to decertify and dispose of the right of way, the PE or Project Manager (PM) sends a request to the FHWA for their approval of the disposal if an Interstate freeway is involved or if federal aid participated in the acquisition of right of way (Title 23 CFR, Chapter I, Part 713, Subpart C.). After the necessary approvals are obtained, the responsible project development unit sends the information to Right of Way for action. The Right of Way Branch is responsible for processing the necessary Director's Deed for approval by the California Transportation Commission. See Appendix JJ for the format of the transmittal ("Approval to Decertify & Sell Operating Right of Way").

#### **FHWA Involvement**

FHWA approval must be obtained if the right of way is on an Interstate Route, or if federal funds were used for right of way acquisition. Discuss this with the Project Development (PD) Coordinator (and the FHWA Transportation Engineer, as appropriate) to facilitate processing and to avoid excessive work on questionable proposals. Note that ISTEA guidelines for FHWA non-involvement do not apply to this type of action.

Under FHWA environmental regulations, disposal of excess right of way is a Categorically Excluded (CE) action. A CE form must accompany all requests for decertification of access control and disposal of operating right of way. For further details, see the *Environmental Handbook*, Article 2-2.5.

#### **DLPP Notifications**

Whenever a request (or other correspondence) for decertification and disposal of right of way is sent to the District Director, the FHWA, or Right of Way, a copy should be sent to Design and Local Programs Program (DLPP), Attention: R/W Disposal.

## ARTICLE 2 - Access Control Policy

### **Disposal of Access Rights**

Disposal of access rights is needed to provide openings in the access control line for private or public driveways (to a library, sheriff's substation, etc.) or to a change in the access control limits to facilitate private or public development. It is also needed for a new public street through access control connecting to a cross street but not directly connecting to the freeway or expressway.

### **Private Property Value Enhancement**

Access control changes that directly serve private property require that compensation be obtained for the value enhancement that is based on a "before and after" appraisal of the property; in other words, first without any change in the State access control, then with the new access point. In the event that the private property owner or the developer is required to pay for any necessary public highway modification or mitigation measures to accommodate the new access, a credit offset against the value enhancement equal to the cost of such highway work will be allowed.

In no event will compensation be less than the larger of (1) the value enhancement benefit to the private property by increased development potential due to the change in State access control rights, or (2) the cost of public highway modifications or mitigation measures that are required to accommodate the new access, plus any other costs to the State (including federal payback requirements).

### **New Public Road Connection — Compensation for Preponderance of Benefits**

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above, will be required unless the public street clearly serves a public purpose and there are no abutting private properties that would receive a value enhancement due to increased development potential. In other words, compensation would be required if abutting property owners received the preponderance of benefits from a change in access control. See Chapter 27 of this manual for further information.

### **New Public Road Connections to Freeways**

The above does not apply to new public road connections directly entering a freeway or expressway. Such connections require facility approval by the California Transportation Commission (CTC). They follow the policies and procedures outlined in Chapter 27, "New Public Road Connections to Freeways". However, that chapter should be referenced for the decision process used to define a private access opening to an expressway.

## ARTICLE 3 - Request for Approval

### Design Request

The Design request to the District Director for approval to decertify and dispose of portions of rights of way on operating facilities should have a cover memorandum asking for the District Director's approval. Spaces should be provided for the District Director's signature (marked APPROVED), and for appropriate endorsement by the originating unit (marked APPROVAL RECOMMENDED BY). The memo should include a brief description of the need for and justification for the action.

The request should also include supporting data to justify the action.

### Supporting Data

Limit the supporting data attachment to pertinent data from the following:

- Parcel Identification
  - Excess parcel number
  - Area of parcel or description of access rights
  - Federal-aid right of way project number used for parcel acquisition
  - Expenditure Authorization Number
- Justification and Explanation

Briefly describe the parcel, the reason for disposition of the parcel or access rights, the reason the rights of way are not needed, and any additional background information.
- Exhibits
  - Location map
  - A right of way map with calculated dimensions and bearings of new lines or revised access control, with the subject parcel or parcels outlined in color
  - An "as-built" plan with the parcel outlined in color and a dimension showing the minimum clearance between the facility's final edge of pavement and the new right of way line. The minimum clearance should be consistent with adjacent segments of the facility and should comply with *Highway Design Manual* standards.
  - Cross sections to show features, if needed

If federal funding was involved on a parcel that is excess property, one set of exhibits is needed for the district transmittal request to the FHWA. For FHWA approval of a change in access control, the district request to the FHWA needs two sets of exhibits. One informational copy with exhibits should be sent to DLPP, Attention: R/W Disposal, of any request to decertify and dispose of rights of way, whether or not federal funding is involved.

- Findings that —
  - The parcel (or access rights) is not needed for highway purposes in the future (indicate if highway is federal-aid).
  - The retained right of way is adequate for the facility, under current standards.
  - The release will not adversely affect the traffic operations of the highway.
  - The parcel is not suitable for use in restoring, preserving, or improving the scenic beauty next to the highway, consonant with the intent of the Highway Beautification Act of 1965.
  - Reservations or exceptions are to be assumed by the buyer (utilities, easements, etc.).
- A statement (as applicable) that —
  - The payment received will be credited to federal funds at the same pro rata share as federal funds participated in the acquisition of the right of way,

OR

  - No credit will be made to federal funds, as there was no federal funding participation in the acquisition of the right of way.
- Method of Disposal
  - Public sale,

OR

  - Negotiated sale based on current appraised fair market value,

OR

  - Conveyance to another governmental agency for public use, either with payment to the State, or without payment to the State.

- Estimate of value of property or property rights

Include an estimate of the value of the property or property rights to be sold. If a new public road connection is involved and no compensation from property owners is proposed, a supporting evaluation and justification of the determination should be included that reflects the considerations in Article 2 of this chapter: in essence, that compensation is required if the abutting property owner(s) receive the preponderance of benefits from value enhancement resulting from increased development potential due to the change in State access control.

- Applicable Bikeway Data

For specific compliance requirements relating to bikeways and the abandonment of right of way, see Chapter 31, Section 3, of this manual.

- Categorical Exemption/Exclusion forms

An approved Categorical Exemption/Exclusion form must accompany all requests to Right of Way for decertification of access control and disposal of operating rights of way.

### **DLPP Notification**

When a District Director approves a request to decertify and dispose of rights of way, one informational copy with exhibits should be sent to DLPP, Attention: R/W Disposal.